

## REMARKS

Applicants thank Examiner Halvorson for the telephone interview of October 12, 2006 in which the restriction requirement was clarified. Applicants acknowledge Examiner Halvorson's statement that if 'epithelial cell disorders' is elected from **Group I**, claims 4-6 and 19-26 will not be examined.

The Examiner has required a restriction to one of two groups under 35 U.S.C. §121. The Examiner contends that the inventions of **Groups I and II** are distinct, each from the other.

Applicants respectfully assert that a single search would necessarily result in a complete search of the art related to the claims as filed. In addition, Applicants respectfully assert, contrary to the Examiner's contention, that to search and examine the subject matter of the claims as filed would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, August 2001) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Accordingly, Applicants respectfully request that the restriction requirement under 35 U.S.C. §121 to **Groups I and II** be withdrawn.

In order to be fully responsive, however, Applicants hereby provisionally elect with traverse to prosecute the claims of **Group I** (claims 1-3, 7-18, and 27-30), defined by the Examiner as drawn to a method of treating a non-neoplastic hyperproliferative cell or excessive cell accumulation disorder in a patient, for prosecution in the application.

Upon the allowance of the method claims of **Group I**, Applicants request that any withdrawn method claims that depend from or otherwise include all the

limitations of the allowable method claims of **Group I** be rejoined in accordance with the provisions of MPEP § 821.04.

### **Species election**

The Examiner has further required a species election under 35 U.S.C. §121 to a single disclosed species for the claims of **Group I**. Applicants assert that, pursuant to MPEP §803.2, the subject matter of the individual species can be examined together in a single application without imposing a serious burden on the Examiner.

In order to be fully responsive, however, Applicants provisionally elect the following species:

**epithelial cell disorder** (as recited in claims 1-3, 7-18, and 27-30);

**lung fibrosis** (as recited in claim 2);

**secretion of inflammatory factors** (as recited in claim 3);

**increase in EphA2 phosphorylation** (as recited in claim 14);

**one or more immunomodulatory agents** ( as recited in claim 27);

**antibody** (as recited in claim 7); and

**secretion of fibronectin** (as recited in claim 17).

### **Anticipated Rejoinder of Claims Pursuant to M.P.E.P. § 821.04**

The Examiner has required a restriction between methods of treating and methods of diagnosing claims. Applicants have elected to prosecute the method claims of **Group I** (claims 1-3, 7-18, 27-30), defined by the Examiner as drawn to a method of treating a non-neoplastic hyperproliferative cell or excessive cell accumulation disorder in a patient. Upon allowance of the method claims of **Group I**, Applicants respectfully request that the Examiner rejoins the claims of **Group II** (e.g., claims 31 and 32) pursuant to MPEP § 821.04.

The Attorney for the Applicants retains the right to petition from the restriction requirement under 37 C.F.R. § 1.144. Should the species restriction be maintained, Applicants, upon allowance of a generic claim, will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim pursuant to 37 C.F.R. §1.141.

Applicants reserve the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicants do not abandon or waive any rights in the non-elected inventions.

### **Conclusion**

Applicants respectfully request that the remarks of the present Response be entered and made of record in the present application. The application is believed to be in condition for allowance. Early notice to that effect is earnestly solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution, the undersigned can be reached at the telephone number indicated below. If any additional fees are required in connection with this paper, please charge Deposit Account No. 500479 for the appropriate amount.

Respectfully submitted,



Michael G. Penn  
Reg. No. 55,532  
Attorney for Applicants

Date: February 27, 2007 \_\_\_\_\_

**MEDIMMUNE, INC.**  
One MedImmune Way  
Gaithersburg, MD 20878  
Phone: (301) 398-5565  
Fax: (301) 398-8565